Crown Transportation St. Louis, Inc. and ADI Business Group, Inc. d/b/a Crown Logistics, Single Employer *and* Highway, City and Air Freight Drivers, Dockmen, Marine Officers Association, Dairy Workers, and Helpers Local Union No. 600, affiliated with International Brotherhood of Teamsters, AFL–CIO. Case 14–CA–24312

April 18, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon a charge and amended charge filed by the Union on October 28 and December 30, 1996, the General Counsel of the National Labor Relations Board issued a complaint on December 31, 1996, against Crown Transportation St. Louis, Inc. and ADI Business Group, Inc. d/b/a Crown Logistics, Single Employer (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although the Respondent filed an answer to the complaint, it withdrew that answer on March 14, 1997.

On March 24, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On March 25, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Here, although the Respondent initially did file an answer, the Respondent withdrew its answer to the complaint on March 14, 1997. The Respondent's withdrawal of its answer to the complaint has the same effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Crown Transportation St. Louis, Inc. (Crown Transportation), a Missouri corporation, with an office in Kansas City, Missouri, and a place of business at Borden Pasta in St. Louis, Missouri (the St. Louis facility), has been engaged in the transportation of food and other products. During the 12-month period ending November 30, 1996, Crown Transportation, in conducting its business operations, purchased and received at its St. Louis, Missouri facility goods valued in excess of $50,000 directly from points outside the State of Missouri, performed services valued in excess of $50,000 in States other than the State of Missouri, and performed services valued in excess of $50,000 for enterprises who meet other than a solely indirect standard for the assertion of the Board's jurisdiction.

At all material times, ADI Business Group, Inc. (ADI), a Missouri corporation with its principal office in Shawnee Mission, Kansas, and a place of business at Borden Pasta in St. Louis, Missouri (the St. Louis facility), has been engaged in the transportation of food and other products. During the 12-month period ending November 30, 1996, ADI, in conducting its business operations, purchased and received at its St. Louis, Missouri facility goods valued in excess of $50,000 directly from points outside the State of Missouri, performed services valued in excess of $50,000 in States other than the State of Missouri, and performed services valued in excess of $50,000 for enterprises who meet other than a solely indirect standard for assertion of the Board's jurisdiction.

At all material times, Crown Transportation and ADI have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises. Based on its operations described above, Crown Transportation and ADI constitute a single-integrated business enterprise and a single employer within the meaning of the Act. We find that, at all material times, Crown Transportation and ADI have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective

bargaining within the meaning of Section 9(b) of the Act:

> All drivers employed by the Respondent at its St. Louis, Missouri facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

On March 7, 1994, the Union was certified as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in a collective-bargaining agreement effective from July 27, 1994, through July 27, 1998 (1994–1998 collective-bargaining agreement). At all times since March 7, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Since about August 1, 1996, the Respondent has failed to continue in effect all the terms and conditions of the agreement described above, by conduct including failing and refusing to pay employees' wages and accrued vacation pay due and failing to make health and welfare fund contributions. The Respondent engaged in this conduct without the Union's consent. These terms and conditions of employment are mandatory subjects for the purpose of collective bargaining.

About September 20, 1996, the Respondent closed its facility and laid off all unit employees without notice to the Union and without affording the Union an opportunity to bargain over the effects of the closing and the resulting layoffs. About September 25 and October 23, 1996, the Union, by letter, requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit over the effects on the unit of the decision to close its facility and the resulting layoffs. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. Since about September 25, 1996, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit over the effects of the closure of its facility and the resulting layoffs.

Since about October 23, 1996, the Union, by letter, has requested that the Respondent furnish the Union with information relating to policing the 1994–1998 collective-bargaining agreement and the closure of the Respondent's St. Louis facility. The requested information is necessary for and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since about October 23, 1996, the Respondent has failed and refused to furnish the Union with the requested information.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to pay employees wages and accrued vacation pay due since about August 1, 1996, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required health and welfare fund contributions since about August 1, 1996, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.[1]

In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing and refusing to bargain over the effects of the closure, we shall require the Respondent to bargain with the Union concerning the effects of closing its facility on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp*., 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra.

In addition, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees, we shall order the Respondent to furnish the Union the information requested on October 23, 1996.

Finally, in view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Crown Transportation St. Louis, Inc. and ADI Business Group, Inc. d/b/a Crown Logistics, Single Employer, St. Louis, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally failing to continue in effect all the terms and conditions of the 1994–1998 collective-bargaining agreement covering employees in the following unit, including failing or refusing to pay the unit employees wages and accrued vacation pay that is due and failing to make health and welfare fund contributions on their behalf:

> All drivers employed by the Respondent at its St. Louis, Missouri facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

(b) Closing its facility and laying off unit employees without providing notice to the Union and an opportunity to bargain over the effects of the closing and the resulting layoffs.

(c) Failing to provide the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms and conditions of the 1994–1998 collective-bargaining agreement, and make the unit employees whole for any loss of earnings, benefits, or expenses that they incurred resulting from its failure to honor the agreement since August 1, 1996, in the manner set forth in the remedy section of this decision.

(b) On request, bargain collectively and in good faith with the Union with respect to the effects on the unit employees of its decision to close its St. Louis facility and to lay off its unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

(c) Pay the unit employees their normal wages for the period set forth in the remedy section of this decision.

(d) Provide the Union the information requested on October 23, 1996.

(e) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, mail an exact copy of the attached notice marked ''Appendix''[2] to Highway, City and Air Freight Drivers, Dockmen, Marine Officers Association, Dairy Workers, and Helpers Local Union No. 600, affiliated with International Brotherhood of Teamsters, AFL-CIO, and

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

to all unit employees who were employed by the Respondent at any time since October 28, 1996, at the St. Louis, Missouri facility. Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 18, 1997

William B. Gould IV,	Chairman
Sarah M. Fox,	Member
John E. Higgins, Jr.,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally fail to continue in effect all the terms and conditions of the 1994–1998 collective-bargaining agreement with Highway, City and Air Freight Drivers, Dockmen, Marine Officers Association, Dairy Workers, and Helpers Local Union No. 600, affiliated with International Brotherhood of Teamsters, AFL–CIO, covering the following unit, including failing or refusing to pay the unit employees wages and accrued vacation pay that is due and failing to make health and welfare fund contributions on their behalf:

> All drivers employed by us at our St. Louis, Missouri facility, excluding office clerical and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT close our facility or lay off unit employees without providing notice to the Union and an opportunity to bargain over the effects of the closing and the resulting layoffs.

WE WILL NOT fail to provide the Union with requested information that is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms and conditions of the 1994–1998 collective-bargaining agreement, and WE WILL make the unit employees whole for any loss of earnings, benefits, or expenses that they incurred resulting from our failure to honor the agreement since August 1, 1996, in the manner set forth in a decision of the National Labor Relations Board.

WE WILL, on request, bargain collectively and in good faith with the Union with respect to the effects on the unit employees of our decision to close our St. Louis facility and to lay off our unit employees, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay the unit employees their normal wages for the period set forth in a decision of the National Labor Relations Board.

WE WILL provide the Union the information it requested on October 23, 1996.

> CROWN TRANSPORTATION ST. LOUIS, INC. AND ADI BUSINESS GROUP, INC. D/B/A CROWN LOGISTICS, SINGLE EMPLOYER